

1      Vanessa R. Waldref  
2      United States Attorney  
3      Eastern District of Washington  
4      Matthew A. Stone  
5      Assistant United States Attorney  
6      402 East Yakima Ave., Suite 210  
7      Yakima, WA 98901  
8      Telephone: (509)-454-4425

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JUN 30 2022

SEAN F. McAVOY, CLERK  
~~YAKIMA, WASHINGTON~~ DEPUTY

7                    UNITED STATES DISTRICT COURT  
8                    FOR THE EASTERN DISTRICT OF WASHINGTON

9      UNITED STATES OF AMERICA,

Case No.: 1:22-CR-2027-LRS

10                  Plaintiff,

Plea Agreement

11                  v.

12      NATHAN LYNN CLOUD,

13                  Defendant.

14      Plaintiff United States of America, by and through Vanessa R. Waldref,  
15      United States Attorney the Eastern District of Washington, and Matthew A. Stone,  
16      Assistant United States Attorney for the Eastern District of Washington, and  
17      Defendant Nathan Lynn Cloud (“Defendant”), both individually and by and  
18      through Defendant’s counsel, Troy J. Lee, agree to the following Plea Agreement.  
19

20      1. Guilty Plea and Maximum Statutory Penalties

21      Defendant agrees to enter a plea of guilty to Count 2 of the Superseding  
22      Indictment filed on June 14, 2022, which charges Defendant with Possession with  
23      Intent to Distribute a Mixture or Substance Containing a Detectable Amount of  
24      Fentanyl, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), a Class C felony.  
25

26      Defendant understands that the following potential penalties apply:  
27

28      a.      a term of imprisonment of up to 20 years;

- 1                   b.     a term of supervised release of not less than 3 years and up to a  
2                   lifetime;
- 3                   c.     a fine of up to \$1,000,000;
- 4                   d.     denial of certain federal benefits; and
- 5                   e.     a \$100 special penalty assessment.

6                  2.     Supervised Release

7                  Defendant understands that if Defendant violates any condition of  
8                  Defendant's supervised release, the Court may revoke Defendant's term of  
9                  supervised release, and require Defendant to serve in prison all or part of the term  
10                 of supervised release authorized by statute for the offense that resulted in such term  
11                 of supervised release without credit for time previously served on postrelease  
12                 supervision, up to the following terms:

- 13                 a.     5 years in prison if the offense that resulted in the term of  
14                 Supervised Release is a class A felony,
- 15                 b.     3 years in prison if the offense that resulted in the term of  
16                 Supervised Release is a class B felony, and/or
- 17                 c.     2 years in prison if the offense that resulted in the term of  
18                 Supervised Release is a class C felony.

19                  Accordingly, Defendant understands that if Defendant commits one or more  
20                  violations of supervised release, Defendant could serve a total term of  
21                  incarceration greater than the maximum sentence authorized by statute for  
22                  Defendant's offense or offenses of conviction.

23                  3.     The Court is Not a Party to this Plea Agreement

24                  The Court is not a party to this Plea Agreement and may accept or reject it.  
25                  Defendant acknowledges that no promises of any type have been made to  
26                  Defendant with respect to the sentence the Court will impose in this matter.

27                  Defendant understands the following:

- 28                 a.     sentencing is a matter solely within the discretion of the Court;

- 1                   b. the Court is under no obligation to accept any recommendations
- 2                   made by the United States or Defendant;
- 3                   c. the Court will obtain an independent report and sentencing
- 4                   recommendation from the United States Probation Office;
- 5                   d. the Court may exercise its discretion to impose any sentence it
- 6                   deems appropriate, up to the statutory maximum penalties;
- 7                   e. the Court is required to consider the applicable range set forth
- 8                   in the United States Sentencing Guidelines, but may depart
- 9                   upward or downward under certain circumstances; and
- 10                  f. the Court may reject recommendations made by the United
- 11                  States or Defendant, and that will not be a basis for Defendant
- 12                  to withdraw from this Plea Agreement or Defendant's guilty
- 13                  plea.

14                  4. Potential Immigration Consequences of Guilty Plea

15                  If Defendant is not a citizen of the United States, Defendant understands the  
16 following:

- 17                  a. pleading guilty in this case may have immigration
- 18                  consequences;
- 19                  b. a broad range of federal crimes may result in Defendant's
- 20                  removal from the United States, including the offense to which
- 21                  Defendant is pleading guilty;
- 22                  c. removal from the United States and other immigration
- 23                  consequences are the subject of separate proceedings; and
- 24                  d. no one, including Defendant's attorney or the Court, can predict
- 25                  with absolute certainty the effect of a federal conviction on
- 26                  Defendant's immigration status.

Defendant affirms that Defendant is knowingly, intelligently, and voluntarily pleading guilty as set forth in this Plea Agreement, regardless of any immigration consequences that Defendant's guilty plea may entail.

**5. Waiver of Constitutional Rights**

Defendant understands that by entering this guilty plea, Defendant is knowingly and voluntarily waiving certain constitutional rights, including the following:

- a. the right to a jury trial;
- b. the right to see, hear and question the witnesses;
- c. the right to remain silent at trial;
- d. the right to testify at trial; and
- e. the right to compel witnesses to testify.

While Defendant is waiving certain constitutional rights, Defendant understands that Defendant retains the right to be assisted by an attorney through the sentencing proceedings in this case and any direct appeal of Defendant's conviction and sentence, and that an attorney will be appointed at no cost if Defendant cannot afford to hire an attorney.

Defendant understands and agrees that any defense motions currently pending before the Court are mooted by this Plea Agreement, and Defendant expressly waives Defendant's right to bring any additional pretrial motions.

## 6. Elements of the Offense

The United States and Defendant agree that in order to convict Defendant of Possession with Intent to Distribute a Mixture or Substance Containing a Detectable Amount of Fentanyl, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), the United States would have to prove the following beyond a reasonable doubt.

a. *First, on or about January 27, 2022 within the Eastern District of Washington, Defendant knowingly possessed a mixture or substance containing a detectable amount of fentanyl;*

1                   b. *Second*, Defendant possessed it with the intent to distribute it to  
2                   another person.

3                  7. Factual Basis and Statement of Facts

4                  The United States and Defendant stipulate and agree to the following: the  
5                  facts set forth below are accurate; the United States could prove these facts beyond  
6                  a reasonable doubt at trial; and these facts constitute an adequate factual basis for  
7                  Defendant's guilty plea.

8                  The United States and Defendant agree that this statement of facts does not  
9                  preclude either party from presenting and arguing, for sentencing purposes,  
10                 additional facts that are relevant to the Sentencing Guidelines computation or  
11                 sentencing, unless otherwise prohibited in this Plea Agreement.

12                 On January 27, 2022 the Defendant was arrested for an outstanding warrant.  
13                 Search incident to arrest seventeen pills believed to contain fentanyl were located  
14                 on his person. Those pills were sent to the lab and confirmed to contain fentanyl by  
15                 the DEA western laboratory. A search warrant was executed on the Defendant's  
16                 phone, also located on his person at the time of his arrest, and text messages were  
17                 found relating to the distribution of fentanyl pills by the Defendant.

18                 The Defendant knowingly possessed the fentanyl laced pills with the intent  
19                 to distribute them.

20                  8. The United States' Agreements

21                 The United States Attorney's Office for the Eastern District of Washington  
22                 agrees that at the time of sentencing, the United States will move to dismiss Count  
23                 1 of the Superseding Indictment filed on June 14, 2022, which charges Defendant  
24                 with Possession with Intent to Distribute 5 grams or More of Pure (Actual)  
25                 Methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii).

26                 The United States Attorney's Office for the Eastern District of Washington  
27                 agrees not to bring additional charges against Defendant based on information in  
28                 its possession at the time of this Plea Agreement that arise from conduct that is

1 either charged in the Indictment or identified in discovery produced in this case,  
2 unless Defendant breaches this Plea Agreement before sentencing.

3       9. United States Sentencing Guidelines Calculations

4       Defendant understands and acknowledges that the United States Sentencing  
5 Guidelines (“U.S.S.G.” or “Guidelines”) apply and that the Court will determine  
6 Defendant’s advisory range at the time of sentencing, pursuant to the Guidelines.

7       The United States and Defendant agree to the following Guidelines calculations.

8           a. Base Offense Level

9       The United States and the Defendant agree that the base offense level for  
10 Possession with Intent to Distribute a Mixture or Substance Containing a  
11 Detectable Amount of Fentanyl is 24. U.S.S.G. § 2D1.1(c)(8).

12           b. Acceptance of Responsibility

13       The United States will recommend that Defendant receive a three-level  
14 downward adjustment for acceptance of responsibility, pursuant to U.S.S.G.  
15 § 3E1.1(a), (b), if Defendant does the following:

- 16           i.       accepts this Plea Agreement;
- 17           ii.      enters a guilty plea at the first Court hearing that takes  
18                  place after the United States offers this Plea Agreement;
- 19           iii.     demonstrates recognition and affirmative acceptance of  
20                  Defendant’s personal responsibility for Defendant’s  
21                  criminal conduct;
- 22           iv.      provides complete and accurate information during the  
23                  sentencing process; and
- 24           v.       does not commit any obstructive conduct.

25       The United States and Defendant agree that at its option and on written  
26 notice to Defendant, the United States may elect not to recommend a reduction for  
27 acceptance of responsibility if, prior to the imposition of sentence, Defendant is  
28 charged with, or convicted of, any criminal offense, or if Defendant tests positive

1 for any controlled substance.

2           c.     No Other Agreements

3           The United States and Defendant have no other agreements regarding the  
4 Guidelines or the application of any Guidelines enhancements, departures, or  
5 variances. Defendant understands and acknowledges that the United States is free  
6 to make any sentencing arguments it sees fit, including arguments arising from  
7 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed  
8 pursuant to this Agreement, and Defendant's relevant conduct.

9           d.     Criminal History

10          The United States and Defendant have no agreement and make no  
11 representations about Defendant's criminal history category, which will be  
12 determined by the Court after the United States Probation Office prepares and  
13 discloses a Presentence Investigative Report.

14          10.    Incarceration

15          The United States agrees to recommend a sentence no higher than the low  
16 end of the Guidelines, as calculated by the United States. The United States agrees  
17 to recommend that the sentence in this case run concurrently to the Defendant's  
18 sentence for his supervised release violation.

19          Defendant may recommend any legal sentence.

20          11.    Supervised Release

21          The United States and Defendant each agree to recommend 3 years of  
22 supervised release. Defendant agrees that the Court's decision regarding the  
23 conditions of Defendant's Supervised Release is final and non-appealable; that is,  
24 even if Defendant is unhappy with the conditions of Supervised Release ordered by  
25 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty  
26 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,  
27 sentence, or any term of Supervised Release.

1       The United States and Defendant agree to recommend that in addition to the  
2 standard conditions of supervised release imposed in all cases in this District, the  
3 Court should also impose the following conditions:

4           a.     The United States Probation Officer may conduct, upon  
5              reasonable suspicion, and with or without notice, a search of  
6              Defendant's person, residences, offices, vehicles, belongings,  
7              and areas under Defendant's exclusive or joint control.

8           b.     Defendant shall participate and complete such drug testing and  
9              drug treatment programs as the Probation Officer directs.

10          c.     Defendant shall complete mental health evaluations and  
11              treatment, including taking medications prescribed by the  
12              treatment provider. Defendant shall allow reciprocal release of  
13              information between the Probation Officer and the treatment  
14              provider. Defendant shall contribute to the cost of treatment  
15              according to the Defendant's ability.

16          12. Criminal Fine

17       The United States and Defendant may make any recommendation  
18 concerning the imposition of a criminal fine. Defendant acknowledges that the  
19 Court's decision regarding a fine is final and non-appealable; that is, even if  
20 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for  
21 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea  
22 Agreement, or appeal Defendant's conviction, sentence, or fine.

23          13. Mandatory Special Penalty Assessment

24       Defendant agrees to pay the \$100 mandatory special penalty assessment to  
25 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.  
26 § 3013.

27       //

1       14. Denial of Federal Benefits

2       Defendant understands that by entering this plea of guilty, Defendant is no  
3 longer eligible for assistance under any state program funded under part A of Title  
4 IV of the Social Security Act (concerning Temporary Assistance for Needy  
5 Families) or benefits under the food stamp program or any state program carried  
6 out under the Food Stamp Act. 21 U.S.C. § 862a. Defendant also understands that  
7 the Court may deny Defendant's eligibility for any grant, contract, loan,  
8 professional license, or commercial license provided by an agency of the United  
9 States or by appropriated funds of the United States. 21 U.S.C. § 862.

10      15. Payments While Incarcerated

11      If Defendant lacks the financial resources to pay the monetary obligations  
12 imposed by the Court, Defendant agrees to earn money toward these obligations by  
13 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

14      16. Additional Violations of Law Can Void Plea Agreement

15      The United States and Defendant agree that the United States may, at its  
16 option and upon written notice to the Defendant, withdraw from this Plea  
17 Agreement or modify its sentencing recommendation if, prior to the imposition of  
18 sentence, Defendant is charged with or convicted of any criminal offense or tests  
19 positive for any controlled substance.

20      17. Waiver of Appeal Rights

21      Defendant understands that Defendant has a limited right to appeal or  
22 challenge Defendant's conviction and the sentence imposed by the Court.

23      Defendant expressly waives all of Defendant's rights to appeal Defendant's  
24 conviction and the sentence the Court imposes.

25      Defendant expressly waives Defendant's right to appeal any fine, term of  
26 supervised release, or restitution order imposed by the Court.

27      Defendant expressly waives the right to file any post-conviction motion  
28 attacking Defendant's conviction and sentence, including a motion pursuant to 28

1 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from  
2 information not now known by Defendant and which, in the exercise of due  
3 diligence, Defendant could not know by the time the Court imposes sentence.

4 Nothing in this Plea Agreement shall preclude the United States from  
5 opposing any post-conviction motion for a reduction of sentence or other attack  
6 upon the conviction or sentence, including, but not limited to, writ of habeas  
7 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

8       18. Compassionate Release

9       In consideration for the benefits Defendant is receiving under the terms of  
10 this Plea Agreement, Defendant expressly waives Defendant's right to bring any  
11 motion for Compassionate Release other than a motion arising from one of the  
12 specific bases set forth in this paragraph of this Plea Agreement. The United States  
13 retains the right to oppose, on any basis, any motion Defendant files for  
14 Compassionate Release.

15       The only bases on which Defendant may file a motion for Compassionate  
16 Release in the Eastern District of Washington are the following:

17       a. Medical Condition of Defendant

18           i.      Defendant is suffering from a terminal illness (i.e., a  
19                  serious and advanced illness with an end of life  
20                  trajectory). A specific prognosis of life expectancy (i.e.,  
21                  a probability of death within a specific time period) is not  
22                  required. Examples include metastatic solid-tumor  
23                  cancer, amyotrophic lateral sclerosis (ALS), end-stage  
24                  organ disease, and advanced dementia; or

25           ii.     Defendant is suffering from a serious physical or medical  
26                  condition, a serious functional or cognitive impairment,  
27                  or deteriorating physical or mental health because of the  
28                  aging process that substantially diminishes the ability of

the defendant to provide self-care within the environment of a correctional facility and from which Defendant is not expected to recover.

b. Age of Defendant

- i. Defendant is at least 65 years old, is experiencing a serious deterioration in physical or mental health because of the aging process; and has served at least 10 years or 75 percent of Defendant's term of imprisonment, whichever is less; or
- ii. Defendant is at least 70 years old and has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which Defendant is imprisoned.

c. Family Circumstances

- i. The caregiver of Defendant's minor child or children has died or become incapacitated, and Defendant is the only available caregiver for Defendant's minor child or children; or
- ii. Defendant's spouse or registered partner has become incapacitated, and Defendant is the only available caregiver for Defendant's spouse or registered partner.

d. Subsequent Reduction to Mandatory Sentence

- i. Defendant pleaded guilty to an offense which, on the date of Defendant's guilty plea, carried a mandatory minimum sentence; and
- ii. after the entry of judgment, the length of the mandatory minimum sentence for Defendant's offense of conviction was reduced by a change in the law; and

iii. the application of the reduced mandatory minimum sentence would result in Defendant receiving a lower overall sentence.

e. Ineffective Assistance of Counsel

- i. Defendant seeks Compassionate Release based on a claim of ineffective assistance of counsel arising from information that Defendant both
  1. did not know at the time of Defendant's guilty plea, and
  2. could not have known, in the exercise of due diligence, at the time the Court imposed sentence.

19. Withdrawal or Vacatur of Defendant's Plea

Should Defendant successfully move to withdraw from this Plea Agreement or should Defendant's conviction be set aside, vacated, reversed, or dismissed under any circumstance, then:

- a. this Plea Agreement shall become null and void;
- b. the United States may prosecute Defendant on all available charges;
- c. The United States may reinstate any counts that have been dismissed, have been superseded by the filing of another charging instrument, or were not charged because of this Plea Agreement; and
- d. the United States may file any new charges that would otherwise be barred by this Plea Agreement.

The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

Defendant agrees to waive any objections, motions, and defenses Defendant might have to the United States' decision about how to proceed, including a claim that the United States has violated Double Jeopardy.

Defendant agrees not to raise any objections based on the passage of time, including but not limited to, alleged violations of any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

**20. Waiver of Attorney Fees and Costs**

9       Defendant agrees to waive all rights Defendant may have under the "Hyde  
10 Amendment," Section 617, P.L. 105- 119 (Nov. 26, 1997), to recover attorneys'  
11 fees or other litigation expenses in connection with the investigation and  
12 prosecution of all charges in the above-captioned matter and of any related  
13 allegations (including, without limitation, any charges to be dismissed pursuant to  
14 this Plea Agreement or any charges previously dismissed or not brought as a result  
15 of this Plea Agreement).

## 21. Integration Clause

17 The United States and Defendant acknowledge that this document  
18 constitutes the entire Plea Agreement between the United States and Defendant,  
19 and no other promises, agreements, or conditions exist between the United States  
20 and Defendant concerning the resolution of the case.

21 This Plea Agreement is binding only on the United States Attorney's Office  
22 for the Eastern District of Washington, and cannot bind other federal, state, or local  
23 authorities.

24 The United States and Defendant agree that this Agreement cannot be  
25 modified except in a writing that is signed by the United States and Defendant.

#### Approvals and Signatures

27 Agreed and submitted on behalf of the United States Attorney's Office for  
28 the Eastern District of Washington.

1      Vanessa R. Waldref  
2      United States Attorney



6/30/22

Date

3      Matthew A. Stone  
4      Assistant United States Attorney

5  
6  
7      I have read this Plea Agreement and I have carefully reviewed and discussed  
8      every part of this Plea Agreement with my attorney. I understand the terms of this  
9      Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and  
10     voluntarily. I have consulted with my attorney about my rights, I understand those  
11     rights, and I am satisfied with the representation of my attorney in this case. No  
12     other promises or inducements have been made to me, other than those contained  
13     in this Plea Agreement. No one has threatened or forced me in any way to enter  
14     into this Plea Agreement. I agree to plead guilty because I am guilty.

  
Nathan Lynn Cloud

6/30/22

Date

15  
16  
17     I have read the Plea Agreement and have discussed the contents of the  
18     agreement with my client. The Plea Agreement accurately and completely sets  
19     forth the entirety of the agreement between the parties. I concur in my client's  
20     decision to plead guilty as set forth in the Plea Agreement. There is no legal  
21     reason why the Court should not accept Defendant's guilty plea.

  
Troy J. Lee  
Attorney for Defendant

6/30/22

Date